

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Claims 1, 17, 18, and 20 are amended. Claims 1-22 are now pending in this application.

Interview Summary

The courtesy extended by the Examiner toward Applicant's representative, Mr. Matthew Kremer (Reg. No. 58,671), during a recent telephone interview is acknowledged with appreciation. During the interview, the Examiner agreed that claim 20 would be allowable over the prior art if returned to the originally disclosed form. The Examiner also stated that the 112 rejection based on the use of the "body side panel" and the "cabin side panel" to define the primary and secondary chambers will be withdrawn but the 112 rejection based on the use of the term "cell" would remain.

§ 112 Rejections

Claims 8, 13, 19, and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because the use of the term "cell" is alleged to be unclear. This rejection is traversed because the term "cell" is clear and definite.

As pointed out in the previous reply filed June 27, 2006, the term "cell" is broad enough to encompass merely partitioned spaces. Webster's Encyclopedic Unabridged Dictionary of the English Language has several definitions for "cell" including, for example, "any of various small compartments or bounded areas forming part of a whole." (See Appendix of the previous reply.) For further clarification, Webster's further defines a "compartment" to include "a...space marked or partitioned off." (See Appendix of the previous reply.) Thus, one with ordinary skill in the art would understand the term "cell" to include "a small space marked off as part of a whole." This is particularly true in light of the specification because the disclosure talks of cushion cells 21, 22, 23, 24, 25, 26, 27, 28, and 29, which can make up the primary chamber cell group, according to one embodiment of the present invention. (See paragraphs 0024-0030 of the specification.) These cushion cells are essentially spaces marked off by one or more connected portions 13-17 and 40-44 which make up the primary chamber.

The Office Action stated that a cell is defined as an "enclosed cavity" and that the definition offered in the previous response "diverges from the applicant's usage of the word

‘cell.’” (Paragraph 3 of the Office Action.) It is respectfully submitted that there is no support for such an assertion. The determination of whether a claim term is clear and definite relies upon whether one with ordinary skill in the art can discern the scope of such a term, as stated in MPEP 2173.02. (“[A] claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible. *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000”). Furthermore, the “[d]efiniteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.” (MPEP 2173.02).

As to claim interpretation that one with ordinary skill in the art would use, MPEP 2111.01 states:

It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the “ordinary” and the “customary” meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003)...

The ordinary and customary meaning of a term may be evidenced by a variety of sources...including: ...dictionaries and treatises...

If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. *Brookhill-Wilk I*, 334 F. 3d at 1300, 67 USPQ2d at 1137; see also *Renishaw PLC v. Marposs Societa" per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings."). (MPEP 2111.01.)

In this case, the use of the term “cell” clearly does not mean “an enclosed cavity” as this is inconsistent with the specification. A definition has been provided, which is clear, definite, and is consistent with the specification, i.e., “a small space marked off as part of a whole.” This definition would be known and be considered to be the scope of the term “cell” by one with ordinary skill in the art. Further, no evidence has been set forth to support the assertion that this definition is incorrect. The fact that the term “cell” can mean “an enclosed cavity” does not mean that the “enclosed cavity” definition is the only definition to the

exclusion of any more appropriate definitions. Therefore, the term “cell” is not indefinite; and thus, claims 8, 13, 19, and 20 are not indefinite for this reason.

Reconsideration and withdrawal of the rejection based on 35 U.S.C. 112 is respectfully requested.

Specification

The specification was objected to because of the use of the term “cell.” This objection is traversed for the same reasons as provided above for the 112 rejection. Reconsideration and withdrawal of the objection are respectfully requested.

Rejection based on Staub

Claims 1-7, 9, 14-15, and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,059,312 (“Staub”). The rejection should be withdrawn because Staub fails to disclose, teach, or suggest the claimed invention.

For example, claim 1 (as amended) recites that “wherein the separation panel is configured to permit air to enter the entire first surface area from the primary chamber and to flow through the entire second surface area into the secondary chamber.” Claims 17-18 recite similar features. Staub does not disclose or suggest this feature. In particular, Staub discloses a panel 6 in which gas flows through a hole 16 and passages 30. However, Staub does not disclose that panel 6 has surface areas that are configured to permit air to flow into and through the entire surface areas. Thus, Staub does not anticipate claims 1 and 17-18 and the rejection should be withdrawn.

Claims 2-7, 9, and 14-15 depend from claim 1 and are allowable therewith for at least the reasons set forth above without regard to the further patentable limitations contained therein.

Reconsideration and withdrawal of the rejection based on Staub are respectfully requested.

Rejection based on Lachat

Claims 1-5 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,791,685 (“Lachat”). The rejection should be withdrawn because Lachat fails to disclose, teach, or suggest the claimed invention.

For example, claim 1 (as amended) recites that “wherein the separation panel is configured to permit air to enter the entire first surface area from the primary chamber and to

flow through the entire second surface area into the secondary chamber.” Amended independent claim 17 includes a similar feature. Lachat does not disclose or suggest this feature. In particular, Lachat discloses a panel 56a in which gas flows through holes 58. However, Lachat does not disclose that panel 56a has surface areas that are configured to permit air to flow into and through the entire surface areas. Thus, Lachat does not anticipate claims 1 and 17 and the rejection should be withdrawn.

Claims 2-5 depend from claim 1 and are allowable therewith for at least the reasons set forth above without regard to the further patentable limitations contained therein.

Reconsideration and withdrawal of the rejection based on Lachat are respectfully requested.

Rejection based on Abe

Claims 1-9, 13-15, and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2004/0145162 (“Abe”). The rejection should be withdrawn because Abe fails to disclose, teach, or suggest the claimed invention.

For example, claim 1 (as amended) recites that “wherein the separation panel is configured to permit air to enter the entire first surface area from the primary chamber and to flow through the entire second surface area into the secondary chamber.” Amended independent claims 17-18 include similar features. Abe does not disclose or suggest this feature. In particular, Abe discloses a panel 54 in which gas flows through holes 54a and 54b. However, Abe does not disclose that panel 54 has surface areas that are configured to permit air to flow into and through the entire surface areas. Thus, Abe does not anticipate claims 1 and 17-18 and the rejection should be withdrawn.

Claim 20 has been amended back to its original form, which has been indicated by the Examiner in the Interview mentioned above to be allowable over the prior art.

Claims 2-9, 13-15, and 19 depend from either claim 1 or 18 and are allowable therewith for at least the reasons set forth above without regard to the further patentable limitations contained therein.

Reconsideration and withdrawal of the rejection based on Abe are respectfully requested.

Conclusion

It is believed that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 12/12/2006

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5582
Facsimile: (202) 672-5399

By Matthew J. Kremer

Howard N. Shipley
Registration No. 39,370

Matthew J. Kremer
Registration No. 58,671